

(b) *Regulations.* The general regulations contained in § 165.23 of this part apply.

Dated: August 27, 2002.

N.E. Merkle,

Captain, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 02-22494 Filed 9-3-02; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2002-0227; FRL-7197-7]

Cypermethrin and an Isomer Zeta-cypermethrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers in or on flax (seed and meal) and mustard seed in connection with crisis exemptions declared by the state of North Dakota under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on flax and mustard. This regulation establishes a maximum permissible levels for residues of zeta-cypermethrin and its inactive R-isomers in these food commodities. The tolerances will expire and are revoked on June 30, 2005.

DATES: This regulation is effective September 4, 2002. Objections and requests for hearings, identified by docket ID number OPP-2002-0227, must be received on or before November 4, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP-2002-0227 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (703) 308-9364; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

2. *In person.* The Agency has established an official record for this

action under docket ID number OPP-2002-0227. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers, in or on flax (seed and meal) and mustard seed at 0.2 parts per million (ppm). These tolerances will expire and are revoked on June 30, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical

residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Recently, EPA has received objections to a tolerance it established for zeta-cypermethrin and its inactive R-isomers on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for zeta-cypermethrin and its inactive R-isomers while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and the extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First, the objections proceeding is not near to conclusion. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has just initiated a 60 day public comment period on them (June 19 2002, 67 FR 41628) (FRL-7167-7). Second, the nature of the current actions are extremely time-sensitive as they address

emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing the tolerances for zeta-cypermethrin and its inactive R-isomers.

III. Emergency Exemption for Zeta-Cypermethrin on Flax and Mustard and FFDCA Tolerances

On May 31 and July 30, 2002, the North Dakota Department of Agriculture availed itself of the authority to declare the existence of crisis situations within the state, thereby authorizing use under FIFRA section 18 of Z-cypermethrin on mustard grown for seed to produce the condiment for control of crucifer flea beetle (*Phyllotreta cruciferae* (Goeze)) and on flax to control grasshoppers, respectively.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of zeta-cypermethrin and its inactive R-isomers, in or on flax (seed and meal) and mustard seed. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2005, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on flax (seed and meal) and mustard seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether zeta-cypermethrin meets EPA's registration requirements for use on flax and mustard or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these

tolerances serve as a basis for registration of zeta-cypermethrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than North Dakota to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zeta-cypermethrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL-5754-7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of zeta-cypermethrin and its inactive R-isomers and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of zeta-cypermethrin and its inactive R-isomers in or on flax (seed and meal) and mustard seed at 1.0 ppm. The most recent estimated aggregate risks resulting from the use of zeta-cypermethrin and its inactive R-isomers are discussed in the **Federal Register** for February 12, 2002 (67 FR 6422) (FRL-6818-8). Final Rule establishing tolerances for residues of zeta-cypermethrin and its inactive R-isomers in or, on edible podded legume vegetables (crop subgroup 6A) at 0.5 ppm; succulent, shelled peas and beans (crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (crop group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm, because in that prior action, risks were estimated assuming tolerance level residues in all commodities for

established tolerances, as well as those for which action was being proposed, such as in this flax and mustard exemption use. Refer to the February 12, 2002, **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for zeta-cypermethrin for use in human risk assessment is discussed in Unit III.A of

the **Federal Register** of February 12, 2002 (67 FR 6422).

EPA assessed risk scenarios for zeta-cypermethrin and its inactive R-isomers under acute, chronic, and short-term and intermediate-term exposures.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the acute exposure assessments: Tolerance level residues were assumed and it was also assumed that 100% of the crops and other commodities with proposed or established cypermethrin or zeta-cypermethrin tolerances contained those residues. Deem default processing factors were used for all commodities in this assessment. All exposures are tier 1

estimates that are extremely conservative and likely overestimate actual dietary exposure.

Using these exposure assessments, EPA concluded that zeta-cypermethrin and its inactive R-isomers exposure from food consumption will utilize 22% of the acute population adjusted dose (aPAD) for the U.S. population, 21% of the aPAD for females 13–years and older, and 24% of the aPAD for infants (> 1–year old), and 33% of the aPAD for children (1–6 years old), the subpopulation at greatest exposure. In addition, despite the potential for acute dietary exposure to zeta-cypermethrin and its inactive R-isomers in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concentrations (EECs) of zeta-cypermethrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	aPAD milli-grams/kilo-gram (mg/kg)	%aPAD (food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.10	22	8.9	0.006	2,700
Females (13–50 years)	0.10	21	8.9	0.006	2,400
Children (1–6 years)	0.10	33	8.9	0.006	670

The following assumptions were made for the chronic exposure assessments: Tolerance level residues were assumed and it was also assumed that 100% of the crops and other commodities with proposed or established cypermethrin or zeta-cypermethrin tolerances contained those residues. Deem default processing factors were used for all commodities in this assessment. All exposures are Tier 1 estimates that are extremely

conservative and likely overestimate actual dietary exposure.

Using these exposure assumptions the EPA concluded that exposure to zeta-cypermethrin and its inactive R-isomers from food will utilize 12% of the cPAD for the U.S. population, 11% of the cPAD for females 13–50 years old and 23% of the cPAD for children 1–6 years old, the subpopulation at greatest exposure. Based on the use pattern, chronic residential exposure to residues

of zeta-cypermethrin and its inactive R-isomers is not expected. In addition, there is potential for chronic dietary exposure to zeta-cypermethrin and its inactive R-isomers in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	cPAD mg/kg/day	%cPAD (food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.18	12	33	.06	5,600
Females (13–50 years)	0.18	11	33	.06	4,800
Children (1–6 years)	0.18	18	33	.06	1,500
Seniors 55+	0.18	12	33	.06	5,600

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Zeta-cypermethrin is not currently registered for use that could result in short-term residential exposure; however, cypermethrin does have indoor and outdoor residential uses and the Agency has determined that it is appropriate to aggregate chronic food

and water and short-term exposures for zeta-cypermethrin and its inactive R-isomers. EPA has concluded that food and residential exposures aggregated result in aggregate margin of exposure (MOEs) of 1,300 for adult males and 600 for children. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term drinking water levels of concern (DWLOCs) were calculated and

compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population subgroup	Aggregate MOE (food + residential)	Aggregate level of concern	Surface water EEC (ppb)	Ground water EEC (ppb)	Short-term DWLOC (ppb)
Adult male	1,300	100	0.46	0.006	3,300
Child	600	100	0.46	0.006	830

Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Zeta-cypermethrin is not registered for use(s) that could result in intermediate-term residential exposure; however, cypermethrin does have indoor and outdoor residential uses, and the Agency has determined that it is

appropriate to aggregate chronic food and water and intermediate-term exposures for zeta-cypermethrin and its inactive R-isomers. EPA has concluded that food and residential exposures aggregated result in an aggregate MOE of 640 for adult males and 300 for children. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition,

intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population subgroup	Aggregate MOE (food + residential)	Aggregate level of concern	Surface water EEC (ppb)	Ground water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Adult Male	640	100	0.46	0.006	1,500
Child	300	100	0.46	0.006	330

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of cypermethrin residues in plants and animal products in PAM II (Method I). This method involves initial acetone-hexane extraction, followed by partitioning with water. The organic layer is evaporated, then redissolved in cyclohexane-methylene chloride and passed through a gel permeation column. The eluate is evaporated, redissolved in hexane and passed through a Florisil column.

Cypermethrin residues are analyzed by gas chromatography (GC) with an electron capture detector (ECD). Since zeta-cypermethrin is an isomer enriched

form of cypermethrin, and the PAM II method is not stereospecific, this method is considered adequate for enforcement of the proposed tolerances of zeta-cypermethrin and its inactive R-isomers.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels have been established for residues of zeta-cypermethrin and its inactive R-isomers in or on these commodities. Therefore, no tolerance discrepancies exist between countries for this chemical.

VI. Conclusion

Therefore, tolerances are established for combined residues of zeta-cypermethrin, methyl(E)-2-(2-(6-(2-

cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate a and the Z isomer of zeta-cypermethrin, methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate in or on flax (seed and meal) and mustard seed at 1.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCFA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to

reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2002-0227 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 4, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your written request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603-0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that

fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket ID number OPP-2002-0227, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the

requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on

one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection,
Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 2002.

Deebra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.418 is amended by adding paragraph (b) to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

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(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of zeta-cypermethin, methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-ylloxy)phenyl)-3-methoxyacrylate and the Z isomer of zeta-cypermethin, methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-ylloxy)phenyl)-3-methoxyacrylate in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA in or on the food commodities in the following table. The tolerances expire and will be revoked by EPA on the date specified in the table.

Commodity	Parts per million	Expiration/revocation date
Flax, meal	0.2	6/30/2005
Flax, seed	0.2	6/30/2005
Mustard, seed	1.0	6/30/2005

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[FR Doc. 02-22606 Filed 8-30-02; 2:45 pm]

BILLING CODE 6560-50-S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-42

[FMR Amendment B-1]

RIN 3090-AH53

Change in Consumer Price Index Minimal Value

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: Public Law 95-105 (5 U.S.C. 7342) requires that at 3-year intervals following January 1, 1981, minimal value be redefined by the Administrator of General Services, after consultation with the Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period. The required consultation has been completed and the minimal value has been increased to mean \$285 or less as of January 1, 2002. This final rule also changes the meaning of sale price of foreign gifts and decorations to an employee by removing the requirement of including the cost of the appraisal in the sale price. The sale price is derived from only the commercially appraised value.

DATES: *Effective Date:* This final rule is effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Director, Personal Property Management Policy Division, General Services Administration, 202-501-3846. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208-7312. Please cite FMR Amendment B-1.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action